

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN BATALLA VIDAL, *et al.*,

Plaintiffs,

v.

CHAD WOLF, Acting Secretary, Department
of Homeland Security, *et al.*,

Defendants.

Case No. 1:16-cv-04756 (NGG) (JO)

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, *et al.*,

Defendants.

Case No. 1:17-cv-05228 (NGG) (JO)

September 1, 2020

**NOTICE OF MOTION BY CONSTITUTIONAL ACCOUNTABILITY CENTER
TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS'
MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

Amicus curiae Constitutional Accountability Center (CAC) respectfully moves for leave to file the attached brief in support of Plaintiffs' motions for partial summary judgment in the above-captioned cases. Counsel for all parties in both cases have consented to the filing of this brief. In support of this motion, *amicus* states:

1. CAC is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC has a strong interest

in preserving the checks and balances set out in our nation’s charter, as well as the proper interpretation of laws that help maintain that balance. Accordingly, CAC has participated as counsel and as *amicus curiae* in numerous cases involving the Constitution’s Appointments Clause and the Federal Vacancies Reform Act of 1998 (FVRA).

2. This Court has “broad discretion” to allow third parties to file *amicus curiae* briefs. *Auto. Club of N.Y. v. Port Auth. of N.Y. and N.J.*, No. 11-6746, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011). “A court may grant leave to appear as an amicus if the information offered is ‘timely and useful,’” *Andersen v. Leavitt*, No. 03-6115, 2007 WL 2343672, at *2 (E.D.N.Y. Aug. 13, 2007) (citation omitted), and “[t]he filing of an *amicus* brief should be permitted if it will assist the judge ‘by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs,’” *Northern Mariana Islands v. United States*, No. 08-1572, 2009 WL 596986, at *1 (D.D.C. Mar. 6, 2009) (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)). District courts routinely permit such briefs when they “are of aid to the court and offer insights not available from the parties,” *United States v. El-Gabrowni*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994), and when the *amicus* has “relevant expertise and a stated concern for the issues at stake in [the] case,” *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). “The primary role of the *amicus* is to assist the Court in reaching the right decision in a case affected with the interest of the general public.” *Russell v. Bd. of Plumbing Examiners*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999).

3. The proposed, attached *amicus* brief satisfies these standards. It describes the history, structure, and purpose of the FVRA, and it discusses how the FVRA interacts with the Department of Homeland Security’s organic statute and with the Administrative Procedure Act. The brief also explains in detail why, for two independent reasons, Chad Wolf’s tenure as Acting

Secretary of Homeland Security violates the FVRA.

For the foregoing reasons, *amicus curiae* requests leave to file the attached brief.

Respectfully submitted,

Dated: September 1, 2020

/s/ David H. Gans
DAVID H. GANS (DG 6677)

ELIZABETH B. WYDRA
BRIANNE J. GOROD
DAVID H. GANS
BRIAN R. FRAZELLE
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
david@theusconstitution.org

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2020, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: September 1, 2020

/s/ David H. Gans

David H. Gans